IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2006

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THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.44427 OF 2002

S.Ramalingham .. Petitioner

vs.

1. The Managing Director,
   Tamil Nadu State Transport
   Corporation Ltd.,
   (Villupuram Division III),
   Kancheepuram District

2. The General Manager,
   Tamil Nadu State Transport
   Corporation,
   (Villupuram Division III),
   Kancheepuram District. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus as stated therein.

For petitioner : Mr.P.I.Thirumoorthy
For respondents : Mr.V.R.Kamalanathan
for R1 and R2

O R D E R

The writ petition has been filed for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the order of the second respondent in Ku.No.727/6807/cha11/TPTC/97, dated 16.11.1998 and the proceedings of the first respondent in Letter No.727/6807/Cha11/TPTC/97, dated 23.4.2002 and quash the same and consequently to direct the second respondent to reinstate the petitioner as Chief Cook with due seniority and all attendant terminal and service benefits.

The brief facts of the case, as stated by the petitioner, are as follows:

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2. The petitioner was appointed as an Assistant Cook in the respondent Corporation, on 17.6.1989. Thereafter, he was promoted as the Chief Cook and posted at Vandavasi Bus Depot Canteen. While so, on 6.11.1997, charges were framed against the petitioner for absence from work for the periods from 5.10.1997 to 31.10.1997 and from 21.10.1997 to 31.10.1997, without prior permission. Another charge memo was issued, on 20.1.1998, for absence from work for the periods from 4.12.1997 to 12.12.1997 and from 16.12.1997 to 24.12.1997. The petitioner had replied to the charges, explaining the reasons for the unauthorised absence. An enquiry was conducted and the report of the enquiry was submitted, on 10.3.1998. Thereafter, a show cause notice was issued, on 17.3.1998. The petitioner had replied to the show cause notice, on 21.3.1998. Accepting the reply, the petitioner was directed to join duty, on 24.3.1998. Thereafter, he had joined in service and was discharging his duties sincerely and without blemish. The petitioner was served with an order, dated 16.11.1998, by the second respondent, removing him from service. Therefore, the petitioner had preferred an appeal, which was rejected by the first respondent, on 23.4.2002. Hence, the petitioner had preferred the present writ petition challenging the order, dated 16.11.1998, passed by the second respondent removing him from service and the proceedings of the first respondent, dated 23.4.2002, confirming the order of removal.

3. The main contention putforth by the learned counsel appearing on behalf of the petitioner is that the petitioner was not given sufficient opportunity to defend himself during the enquiry. Further, he was not given the report of the Branch Manager, dated 7.11.1998, which was one of the main documents relied on by the second respondent, while passing the impugned order, dated 16.11.1998. It has also been pointed out that the second respondent had taken into consideration the earlier incidents, when the petitioner is alleged to have absented himself from duty. However, the petitioner had not been given an opportunity to explain his position with regard to those incidents. It was further contended that the explanation submitted by the petitioner was not considered by the second respondent, while passing the impugned order of dismissal, dated 16.11.1998. It was also contended by the learned counsel appearing on behalf of the petitioner that the punishment of dismissal from service for the charge of unauthorised absence is highly disproportionate in nature.

4. The learned counsel appearing on behalf of the respondent Corporation has filed a counter-affidavit stating that according to clause 24(6) of the standing orders of the Corporation, an employee of the Corporation cannot absent himself from the duty for more than 8 days and any such unauthorised absence would amount to serious misconduct on the part of the employee. The petitioner was unauthorisedly absent from 5.10.1997 to 13.10.1997 and from 21.10.1997 without prior intimation or permission from the authorities concerned. A report, dated 31.10.1997, was submitted by the Superintendent of the concerned Depot, where the petitioner was employed.

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5. Based on the said report, a disciplinary action was initiated against the petitioner by issuing a charge memo, dated 6.11.1997. The petitioner had submitted a representation, dated 4.11.1997, requesting the Management of the respondent Corporation to employee him in service. Considering the representation made by the petitioner, he was permitted to join duty by an order, dated 6.11.1997, without prejudice to the disciplinary action already initiated against him. The petitioner had submitted his explanation to the charge memo and since his explanation was not satisfactory, an enquiry was conducted against the petitioner. The Enquiry Officer by his report, dated 10.3.1998, had found that the charges against the delinquent employee were proved. While so, the petitioner had again remained absent, from 4.12.1997, unauthorisedly. Therefore, another charge memo, dated 20.1.1998, was issued to him. The petitioner had not offered his explanation for the said charge. However, an enquiry was conducted and the enquiry officer by his findings, dated 10.3.1998, held that the charges were proved. Based on the findings of the enquiry officer in both the cases, a second show cause notice, dated 17.3.1998, was issued to the delinquent employee calling for an explanation as to why he should not be removed from service for his habitual absence from the duty. The petitioner had submitted his explanation, dated 21.3.1998.

6. Based on the explanation and his request made to the Management, the petitioner was permitted to join the duty by an order, dated 24.3.1998. However, since the petitioner had failed to correct himself and again remained absent, from 21.10.1998 to 28.10.1998 and from 2.11.1998 onwards, he was dismissed from service by an order, dated 16.11.1998.

7. In such circumstances, it cannot be stated that the punishment of dismissal from service is disproportionate in nature, nor can it be stated that the impugned order passed by the second respondent and confirmed by the first respondent is arbitrary, illegal and contrary to the principles of natural justice. The petitioner was given full opportunity to defend himself during the enquiry proceedings. Further, he was also given repeated chances to redeem himself. However, the petitioner had failed to make use of the opportunities given to him. Therefore, he deserves no sympathy from this Court.

8. Heard the learned counsels appearing for the petitioner as well as for the respondents.

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9. At this stage of the hearing of the writ petition, it was stated by the learned counsel appearing on behalf of the petitioner that the petitioner has been suffering without any work and he has been unable to maintain his family. Further, the petitioner is prepared to be re-employed in the respondent Corporation without any backwages and he is also prepared to suffer an increment cut for two years, without cumulative effect. Further, the petitioner would also submit an undertaking to the authorities concerned to the effect that he would not absent himself

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unauthorisedly in future. Since there were no serious objections from the respondents to the suggestions made by the learned counsel appearing for the petitioner. In such circumstances, the respondents are directed to re-employ the petitioner in the service of the respondent Corporation, based on his undertaking, which would be submitted by the petitioner in writing, within a period of six weeks from the date of receipt of a copy of this order.

10. With the above directions, the writ petition is disposed of. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

To

1. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
(Villupuram Division III)
Kancheepuram District.

2. The General Manager,
Tamil Nadu State Transport Corporation,
(Villupuram Division III)
Kancheepuram District.

1 cc To Mr.P.I.Thirumoorthy, Advocate, SR.64517.
1 cc To Mr.V.R.Kamalanathan, Advocate, SR.64451.

W.P.No.No.44427 OF 2002

JRG(CO)
RVL 31.01.2007

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